

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 494 of 1989

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SMT. IR PANDIT
VERSUS
STATE OF GUJARAT

Appearance:

MR NALIN K THAKKAR for Petitioner
MR PREMAL R JOSHI for Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 08/12/2000

C.A.V. JUDGMENT

1. This petition is directed by the petitioner, an employee of Water Resources Investigation Circle No.3, Multi Storeyed Building, Rajkot, against the judgment of

the Gujarat Civil Services Tribunal, Gandhinagar in Appeal No.234/88 decided on 23rd August, 1988 under which the appeal filed by the petitioner against the order of respondent No.2 dated 10th July, 1987 under which she was reverted from the post of Assistant Superintendent to that of Deputy Accountant for the period of two years by way of penalty, was dismissed.

2. The facts given rise to the present petition are to be briefly taken:

Under the order of the respondent No.1 dated 6th January, 1986, the respondent No.2 transferred two Water Resources Investigation Divisions and thirteen Water Resources Investigation Sub Divisions under the administrative control of concerned District Collectors/District Development Officers, District Panchayat for scarcity works alongwith existing vehicles and all the existing staff members vide order dated 16th January, 1986. The petitioner at the relevant time was working in the office of Executive Engineer, Water Resources Investigation Division, Surendranagar and the said office was placed under the administrative control of District Development Officer, District Panchayat, Surendranagar for scarcity works in Surendranagar District. It is the case of the petitioner that the Division office at Surendranagar remained under administrative control of District Panchayat, Surendranagar from 24th January, 1986 to 31st July, 1986 and during this period it was designated as office of Executive Engineer, Scarcity Relief Panchayat Division No.1, Surendranagar. The petitioner was promoted from the post of Deputy Accountant to the post of Assistant Superintendent (Division) vide order dated 9th April, 1984 of the respondent No.2 in the office of Shri B.G. Pawagadhi, Executive engineer, Water Resources Investigation Division, Surendranagar. It is the say of the petitioner that Shri B.G. Pawagadhi developed certain prejudices against the petitioner. It is to be mentioned that the Shri B.G. Pawagadhi was not impleaded as party either before Tribunal or before this Court in these proceedings. The Executive Engineer created an opportunity in transferring the petitioner, on transfer of whole office to District Panchayat, Surendranagar. The petitioner was transferred from Scarcity Relief Panchayat Division No.1, Surendranagar to Scarcity Cell of District Panchayat, Surendranagar by nomination by the Executive Engineer, Surendranagar vide his order dated 25th February, 1986. It is the say of the petitioner that the Executive Engineer, Surendranagar was not competent to issue the said

transfer order in District Panchayat and hence the petitioner continued to attend the office of Scarcity Relief Panchayat Division No.1 though she was considered as relieved from the said office from 25th February, 1986. It is alleged that the petitioner was not paid her salary from 1st March, 1986 to 31st July, 1986. The petitioner came to be placed under suspension under the order dated 10th September, 1986 of the respondent No.2 in contemplation of the departmental inquiry. Chargesheet was given to the petitioner vide memo dated 20th September, 1986 wherein three charges were levelled against her which are reproduced by her in para-6 of the special civil application. This inquiry against the petitioner was entrusted to the Special Officer of Departmental Inquiries (Non-Gazetted), Rajkot vide letter of respondent No.2 dated 20th November, 1986. The Inquiry Officer came to the conclusion that all the three charges levelled against the petitioner are proved. The respondent NO.2 as disciplinary authority agreed with the findings of the Inquiry Officer and passed the final order of penalty against the petitioner on 10th July, 1987 under which she was ordered to be reverted to the post of Deputy Accountant for a period of two years and her suspension period was ordered to be treated as half pay leave. This order has been challenged by the petitioner before the Tribunal and that has been dismissed. Hence, this petition before this Court.

3. Learned counsel for the petitioner, in addition to the contentions raised by the petitioner before the Tribunal, further raised three contentions. Firstly, it is contended that the inquiry report was not supplied to the petitioner before the order of penalty has been passed. It has next been contended that under Rule 10(3) of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971, notice was not given to the petitioner. Lastly, it is contended that Rule 15 of the Rules aforesaid has also not been complied with. Concluding the arguments, learned counsel for the petitioner contended that there are three penalties which have been imposed upon the petitioner. After filing this petition, under the letter dated 22nd August, 1990, the respondent No.2 directed the petitioner to submit a leave application for Half Pay Leave for the period from 13th September, 1986 to 7th March, 1987 and for Extraordinary Leave for the period from 8th March, 1987 to 9th July, 1987 and further directed to recover the amount of subsistence allowance paid to the petitioner during suspension period from 8th March, 1987 to 9th July, 1987. By amendment of the

petition, this order has also been challenged.

4. The counsel for the respondents, on the other hand, supported the order. It is contended that the petitioner cannot be permitted to raise the contentions which have not been raised by her before the Tribunal. It is contended that otherwise also this matter is decide prior to the date of decision given by the Hon'ble Supreme Court in Mohd. Ramzankhan's case and even if the copy of the inquiry report is not supplied to the petitioner, it will not vitiate the inquiry. In case the violation of provisions of Rules 10(3) and 15 could have been really serious to the proceedings of the departmental inquiry, then this point could have been raised and should have been raised by the petitioner before the Tribunal. On the other grounds raised before the Tribunal, learned counsel for the petitioner submitted that all those points have been considered by the Tribunal and the Tribunal has not committed any error apparent on the face of the order, which calls for the interference of this Court.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. It is no more res integra that the Tribunal in the matter which arises from the orders passed in the departmental inquiry will not sit as an appellate authority over the inquiry report as well as the decision of the disciplinary authority. Reference in this respect may have to the decision of the Apex Court in the case of Government of Tamilnadu vs. A Raja Pandian reported in JT 1994 (7) SC 492. The Tribunal has no jurisdiction to go into truth of the allegation except when they based on no evidence. It can examine the procedure, correctness of the decision making process. Reference in this respect may have to another decision of the Apex Court in the case of Transport Commissioner vs. Thiru A. Radha Krishnan Moorthy reported in JT 1994 (7) SC 744. If that is the position of law with reference to the jurisdiction of the Tribunal, I fail to see how much wider jurisdiction would have been available in such matters to this Court under Articles 226 or 227 of the Constitution. The jurisdiction of this Court under Article 226 or 227 of the Constitution is not that of appellate jurisdiction. Under Article 226 or 227 of the Constitution, this Court cannot enter into arena of appreciation of evidence nor it can go on the question of sufficiency of the evidence. This jurisdiction only relates to the decision making process of the authorities.

7. I find sufficient merits in the contention of the learned counsel for the respondents that it is not open and permissible to the petitioner to raise any new contention or ground which is not taken before the Tribunal. This Court has to go on, examine the validity of the order of the Tribunal and in case the points which were not raised before the Tribunal certainly for non-consideration of the same, there cannot be any illegality or irregularity in the order of the Tribunal, which calls for the interference of this Court. The petitioner has not raised this contention re. non-supply of inquiry report to the petitioner before the order of penalty has been made before the Tribunal and it cannot be permitted to be raised for the reason that if it would have been really so serious, it would have been raised before the Tribunal. Otherwise also, on merits, I do not find any substance in this contention of the learned counsel for the petitioner for two reasons. This matter pertains to the date prior to the decision given by the authority in the case of Mohd. Ramzan Khan's and omission to supply the inquiry report is not fatal to the inquiry. In this respect, reference may have to the decision of the Apex Court in the case of Secretary to Government vs. A.C.J. Britto reported in 1997 (3) SCC 387. Not only this, it is now settled law that merely on non-supply of the inquiry report, the proceedings may not be vitiated unless the delinquent officer has shown that prejudice has been caused to him/her. Reference in this respect may have to the decision of the Apex Court in the case of S.K. Singh vs. Central Bank of India reported in 1996 (6) SCC 415. In this case, learned counsel for the petitioner has failed to show that any prejudice has been caused to the petitioner for non-supply of this inquiry report to her.

8. So far as the contention re. violation of clause (3) of Rule 10 of the Discipline and Appeal Rules is concerned, it is to be stated that no such contention has been raised in the grounds of writ petition. the contention has been raised with reference Rule 10 (4)(i)(b) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. It is stated that the respondent NO.2 is bound to give to the petitioner a show cause notice stating the penalties proposed to be imposed on the petitioner and calling upon him to submit within 15 days of receipt of notice or such further time not exceeding fifteen days as may be allowed, such representation as he may wish to make on the proposed penalty on the basis of the evidence adduced during the inquiry held under Rule 9. Leaving apart the fact that

this point has not been raised and it cannot be permitted to be raised, learned counsel for the petitioner has failed to show what prejudice has been caused to the petitioner by violation of this provision. Here also, learned counsel for the petitioner has failed to show that the violation of this provision was pointed out before the Tribunal. The matter needs to be considered from another aspect that when the matter was taken up before the Tribunal, the petitioner has all the opportunity to raise the points. So otherwise also, in the facts of this case, it is difficult to accept that for non-consideration of this provision, prejudice has been caused to the petitioner and that too to the extent that inquiry has to be held to be vitiated and order of the Tribunal has to be quashed and set aside.

9. Another contention re. violation of provisions of Rule 15 of Rules aforesaid, it is suffice to say that same is also devoid of any substance. The petitioner, in fact, was not on deputation as what it is contended. It was only a temporary arrangement in the peculiar facts of the case where the Government has to deal with the problem of scarcity. It is the case where the services of the petitioner are taken to have been temporarily placed under Panchayat. Temporarily staff has been sent to District Panchayat for scarcity work. It is true that misconduct alleged against the petitioner was committed by her during the period when temporarily staff was with the Panchayat but for this alleged misconduct, inquiry could have been conducted, finalised and punishment could have been given by the parent department and not by the Panchayat. If we go by the contention of the petitioner then it is a case of deputation and on deputation if employee commits some misconduct, it has to be reported to its parent department, as parent department has to conduct the disciplinary inquiry.

10. The contention raised by the learned counsel for the petitioner before the Tribunal that the respondent No.2 was not competent to impose any penalty, is devoid of any substance. The respondent No.2 was declared as Head of Department and he was competent to impose any penalty to Class-III Government servants vide Rule 7 of the Rules, 1971.

11. The other contention raised that the petitioner was nominated to work in the cell set up by District Development Officer and that Officer could have ordered for his nomination and not by an Executive Engineer, it is suffice to say that this also is wholly an untenable

argument. The Executive Engineer, no doubt, has nominated the petitioner to work in another cell but that action of the Executive Engineer was confirmed by the District Development Officer and this is not disputed by the petitioner. So this contention, otherwise also, is nothing but only a concocted one. The misconduct alleged against the petitioner was of very serious nature. The petitioner has not complied with the lawful order of the superior authority and she considers herself to be above the officers. Once the order has been passed by superior officer, it has to be complied with by the petitioner, a subordinate officer. This has not been done and she continued to work on the very place wherefrom she was nominated to another cell. This conduct of the petitioner is not befitting to the services of the Government. The petitioner, in case, had any grievance against this order, she could have approached to the higher authorities or the court. In case the higher authorities, keep the order in abeyance or the Court stayed the same, there may be some semblance of justification in her approach not to comply with the order but that has not been done. The petitioner on her own has not complied with the order and certainly it is a case of insubordination and disobedience of the order of the superior authority and for which the respondent No.2 has acted very liberally and felt content and satisfied by giving the penalty of reduction in the rank for two years. Looking to this grave and serious misconduct of the petitioner, in fact, major penalty could have been given and such a person should have been dismissed from the services. Otherwise it will encourage indiscipline and insubordination and disobedience amongst the lower staff also. The petitioner was holding the post of Assistant Superintendent, a high post and a post of responsibility, and if she has deliberately not complied with the order of the superior officer and she has failed to perform her duty at the time when administration was engaged in most important task of providing relief to scarcity affected people it has to be taken seriously but that has not been done. Liberal view has been taken in this matter but still the petitioner was not satisfied. It is a case of grave dereliction of duties by the officer of the rank of Assistant Superintendent and for which more severe punishment should have been given and rightly the Tribunal has not interfered with the punishment also. In fact, the petitioner had admitted her guilt by necessary inference. She has not complied with that order of the Executive Engineer on the ground that he was not competent, but as stated earlier, this order was

confirmed by the District Development Officer also. Thereafter, there was no justification in the action of the petitioner not to comply with the same. The petitioner was relieved from the office of the Scarcity Relief Panchayat Division No.1 and still she has not reported for duty to the place of her nomination. It is a clear case of deliberately disobeying and not carrying out the order of the superior officer. What more indiscipline and misconduct would have been there than what it has been committed by the petitioner but it is unfortunate that the respondent No.2 has taken this matter very lightly.

12. Learned counsel for the petitioner has failed to show any illegality in the departmental inquiry. The inquiry conducted by the Inquiry Officer was perfectly legal and justified. The Disciplinary Authority in the facts of this case has taken a liberal view and much lower penalty otherwise than what should have been, has been given to her. No interference in the order of the Tribunal is called for.

13. However, so far as the challenge made by the petitioner to the letter of the respondent No.2 dated 22nd August, 1990 is concerned, it is suffice to say that this is a matter which has come in existence after filing of this petition. The petitioner is free to file representation against this letter to the respondent No.1 and the respondent No.1 shall consider the same in accordance with law and pass appropriate order.

14. Subject to the aforesaid directions, this petition fails and the same is dismissed. Rule discharged. The petitioner is directed to pay Rs.1000/as costs of this petition to the respondent No.1.

zgs/-